

Appl. No. 10/659,554
Amdt. dated November 26, 2007
Reply to Office Action of September 25, 2007

REMARKS

Claims 30 to 51, 53, and 57 were pending in the application at the time of examination. The Specification and Claim 43 stand objected to. Claims 51 and 53 stand rejected under § 112, first paragraph. Various combinations of Claims 1 and 30 to 57 stand rejected for nonstatutory obvious-type double patenting. Claims 30 to 51, 53, and 57 stand rejected as anticipated.

Information Disclosure Statement

Applicants note that the comments in the final action concerning the IDS filed so that references cited in the parent application would be listed on the face of a patent issuing on the present application do not address the issue concerning the consideration of the items and instead attempt to treat them as newly submitted, which is error. The Office has previously considered each of the items in the IDS because each of the items appears on the face of U.S. Patent No. 6,633,984.

Accordingly, the Office had sufficient and appropriate information to consider the items. Also, Applicants are under no obligation to even cite the references to have them considered, because MPEP § 609.02 unambiguously states that the references will be considered. There is no statement in § 609.02 that the references will be considered under certain conditions, but rather the concrete statement that the reference in the parent applications will be considered. Moreover, Applicants complying with the requirements of § 609.02 so that the information will be printed on the face of the patent does not modify the requirements of this section.

The rejection confuses the requirements of section MPEP § 609.02 with an IDS in which the information is being

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submitted for the first time. MPEP § 609.02 simply states that all information considered in the parent, grandparent, etc. applications will be considered in a continuing application such as the instant application.

It is difficult to understand how something becomes illegible after it has been considered by the Office. The Office clearly had sufficient information to consider the references, because the references are cited on the face of an issued patent. The refusal by the Office to now consider the items means that the statement in MPEP § 609.02 that the Office will consider all art cited in the parent applications is meaningless and demonstrates that reliance upon statements of policy by the Office as put forth in the MPEP cannot be relied upon. Applicants again respectfully submit that according to the MPEP, the Examiner is required to consider these items because they were considered in the parent application and any other action renders MPEP § 609.02 meaningless, because these items were supposed to be considered without Applicants submitting any paper. Applicants and the public must be able to rely upon the MPEP as to what is and what is not considered in a continuing application.

Specification Objection

The objection to the Specification stated in part:

The term "memory medium" as recited in Claim 51 et al. is not used in the specification.

In maintaining the rejection, the action stated "material that is in the original claims in [Sic] not considered to be in the specification." No support for this conclusion is given and the conclusion directly contradicts what the MPEP characterizes as the specification. For example,

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35 U.S.C. 111. Application

(a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title; and

(C) an oath by the applicant as prescribed by section 115 of this title.

MPEP § 601 at pg. 600-2

A complete application filed under 35 U.S.C. 111(a) comprises a specification, including claims,

MPEP § 601, I. at pg. 600-3

Thus, the MPEP defines that an application contains only a specification, a drawing and an oath. The MPEP further stated that the specification includes claims.

Accordingly, the claims, as filed, are a part of the specification as provided by at least these sections of the MPEP. In addition, the claims are not interpreted in a vacuum, but instead in view of the specification. The specification stated "may be stored in volatile or non-volatile memory or may be received directly over a communication link, e.g. as a carrier wave." Accordingly, when the claims are read in view of the specification, one of skill in the art will understand that at least this section describes a memory medium as recited in the original claims. Moreover, Applicants have requested amendment of the claims to render this rejection moot. Applicants respectfully request reconsideration and withdrawal of the objection to the specification.

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Claim Objections

The objection stated:

Claim 43 is objected to because of the following informalities: The term "said zero or more sets of instructions" in line 4 lacks antecedent basis.

Applicants respectfully traverse the objection. Applicants are unable to find the phrase objected to. The "said" in line 7 of Claim 43 was deleted and is shown with strike-through. Thus, Applicants request withdrawal of the objection, or in the alternative, clarification as to the location of the term.

Applicants have requested amendment of Claim 43 to correct a grammatical informality. This amendment does not require any substantive consideration by the Examiner and so entry is requested.

35 U.S.C § 112, First Paragraph Rejections

Claims 51 and 53 stand rejected under 35 U.S.C. § 112, first paragraph. The rejection stated "tangible memory medium" is not used in Applicant's original specification."

Applicants respectfully traverse the § 112, first paragraph rejection of each of Claims 51 and 53. Again, Applicants note that the claims are not read in a vacuum, but rather in view of the specification and the level of skill in the art. Further, Applicants are not required to describe that which is well known. The fact that a memory medium is tangible is well known. As quoted above, the specification describes at least "stored in volatile or non-volatile memory." Thus, the specification does describe tangible memory medium. The Office

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certainly cannot be asserting that one of skill in the art would not know and understand that volatile and non-volatile memories are tangible. Therefore Applicants respectfully submit that the rejection is not well-founded.

Nevertheless, Applicants have requested amendment of Claims 51 and 53 to read "memory storage medium" to move the prosecution forward. The specification provides numerous examples of such storage media and illustrates the same in a drawing. Applicants respectfully submit that in view of the following remarks, this places the application in condition for allowance and so entry is proper under Rule 116. If the Examiner should disagree, entry is respectfully requested to narrow the issues for appeal.

Obviousness-Type Double-Patenting Rejections.

Through-out the double patenting rejections, an improper standard has been used. Simply being analogous art is not sufficient for combining or modifying references. Such a statement renders large portions of the MPEP moot and so cannot be correct. The statements in the rationale for continuing the rejections are simply unsupported argument. MPEP § 2143 would be meaningless if all that was required was a showing of analogous art to provide a motivation for modifying a prior art reference. MPEP § 2143.01 states:

2143.01 Suggestion or Motivation To Modify the References [R-5]

I. THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION

"There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art."

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Analogous art is not cited by the MPEP as being sufficient to provide a motivation for a combination. There must be at least some demonstration that based on such art, one of skill would be led to the necessary modifications.

Moreover, the rejections require eliminating features in one application and substitution of different features in the instant application. Only the claims can be considered in view of the level of skill in the art in making such modifications, because the claims establish the level of skill in the art.

Further, the statement that "the use of entry points . . . is implicit" is error. The patent claims, in other than the instant application, recite inventions that do not require entry points and the rejection has cited no teaching in those patent claims, the prior art, or the instant application claims to support the conjecture. There is no teaching in the claims or in any of the prior art that supports the conclusion about how to communicate across a context barrier and so the rejection is an admission that Applicant's disclosure and not just the claims are being considered, which is inappropriate.

Finally, general knowledge of entry points in a particular application fails to teach or suggest anything about use of such entry points across a context barrier, and in fact the prior art demonstrates that such use was not possible because an application in one context could not communicate with an application in a different context without making a call through an operating system. There was no direct communication directly between execution contexts via entry points. Accordingly, the rejections ignore explicit claim limitations and posit a position that the prior art taught was incorrect.

The obviousness-double patenting rejection in view of U.S.

Patent No. 6,823,520

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Claims 30, 47, 51, 53, and 57 stand rejected for nonstatutory obviousness-type double patenting in view Claims 1 and 2 of U.S. Patent No. 6,823,520. The rejection stated in part:

Since all programs have entry points, the accessing of such a program across a context barrier must necessarily involve the use of an entry point.

Applicants respectfully traverse the obviousness-type double patenting rejection of each of Claims 30, 47, 51, 53, and 57. Each of the claims in the '520 Patent include "wherein an object instance is associated with a context by recording the name of said context in a header of said object instance, information in said header inaccessible to said one or more program modules."

None of the Claims in the instant application include such a limitation. Accordingly, the rejection must show that when the recording is removed from the Claims of the '520 patent, the patented invention would still work for its intended purpose. Since the '520 patent recites that the recording is used to associate an object instance with a context, the rejection must show that such an association can be made without the recording. This has not been done. The claims in the instant application do not require such a recording and so distinguish over the claims of the '520 patent.

Further, the claims in '520 patent do not require an entry point object. Accordingly, one can practice the invention of Claims 1 and 2 without infringing the Claims of the instant application and conversely. Moreover, there has been no showing of why one, based on the claims in the '520 patent would be motivated to eliminate the recording and substitute an entry point object and even if this were done, there has

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been no showing how the '520 patent would still work without the recording. In an obviousness rejection, the original reference must still work for its intended purpose after the modification. The gist of the claims has been considered and not the explicit claim limitations as a whole. Applicants respectfully request reconsideration and withdrawal of the obviousness-type double patenting rejection of each of Claims 30, 47, 51, 53, and 57 in view of Claims 1 and 2 of U.S. Patent No. 6,823,520.

The obviousness-double patenting rejection in view of U.S.
Patent No. U.S. Patent No. 6,907,608

Claims 30, 47, 51, 53, and 57 stand rejected for nonstatutory obviousness-type double patenting in view Claims 1 to 4 of U.S. Patent No. 6,907,608. Again, the rejection stated in part:

Since all programs have entry points, the accessing of such a program across a context barrier must necessarily involve the use of an entry point.

Applicants respectfully traverse the obviousness-type double patenting rejection of each of Claims 30, 47, 51, 53, and 57. Each of Claims 1 to 4 of the '608 patent include a limitation equivalent to:

a global data structure for permitting one program module to access information from another program module by bypassing said context barrier,

and also

wherein an object instance is associated with a context by recording the name of said context in a header

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of said object instance, information in said header inaccessible to said one or more program modules

The second limitation was discussed above with respect to the '520 patent and so that discussion is also directly applicable to the '608 patent.

The rejection alleges that the accessing across a content barrier must involve the use of an entry point. However, the global data structure in the Claims of the '608 patent demonstrates that this conclusion is not supported by the claims. According, the rejection must eliminate both the global data structure and the recording and then show that the inventions in the Claims of the '608 patent would still work for their intended purpose.

Further, the claims in '608 patent do not require an entry point object because the global data structure permits bypassing the context barrier. Accordingly, one can practice the invention of Claims 1 to 4 of the '608 without infringing the Claims of the instant application and conversely. Moreover, there has been no showing of why one, based on the claims in the '608 patent, would be motivated to eliminate the recording and the global data structure and substitute an entry point object and even if this were done, there has been no showing how the '608 patent would work without the recording and global data structure. Again, the gist of the claims has been considered and not the explicit claim limitations as a whole. Accordingly, the obviousness type double patenting rejection is not well founded. Applicants respectfully request reconsideration and withdrawal of the obviousness-type double patenting rejection of each of Claims 30, 47, 51, 53, and 57 in view Claims 1 to 4 of U.S. Patent No. 6,907,608.

The obviousness-double patenting rejection in view of U.S.
Patent No. 6,922,835

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Claims 30 to 51, 53, and 57 stand rejected for nonstatutory obviousness-type double patenting in view Claim 1 of U.S. Patent No. 6,922,835. The final rejection repeated in part:

. . . all of the limitations of the instant application are anticipated by the claims of the '835 patent.

Applicants respectfully traverse the obviousness-type double patenting rejection of each of Claims 30 to 51, 53, and 57. Claim 1 of the '835 patent recites "one context having access to all program modules without context barrier constraints."

To show that the claims in the instant application are obvious in view Claim 1 of U.S. Patent No. 6,922,835, this one context of the '835 patent must be deleted and the entry point object of the instant application substituted. A context having access to all program modules without context barrier constraints teaches away from such a modification since the context has access to all program modules, communication can occur through the context. Accordingly, the statements in the rejection about anticipation are incorrect. Such a context suggests or teaches nothing about the entry point object of the instant application. Also, there has been no showing that after replacement of such a context that the '835 patent would still work for its intended purpose, because it has not been demonstrated that the entry point object has access to all program modules without context barrier constraints. Accordingly, the obviousness type double patenting rejection is not well founded. Applicants respectfully request reconsideration and withdrawal of the obviousness-type double

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patenting rejection of each of Claims 30 to 53 and 57 in view
Claim 1 of U.S. Patent No. 6,922,835.

The provisional obviousness-double patenting rejection in view
of U.S. Patent Application No. 10/995,926

Claims 30 to 51, 53, and 57 stand provisionally rejected
for nonstatutory obviousness-type double patenting in view of
Claims 1 and 23 to 50 of U.S. Patent Application No.
10/995,926. The rejection repeated in part:

. . . since all programs have entry points, the
accessing of such a program across a context barrier must
necessarily involve the use of an entry point.

Applicants respectfully traverse the obviousness-type
double patenting rejection of each of Claims 30, 47, 51, 53,
and 57. For example Claim 1 of U.S. Patent Application No.
10/995,926 recites:

a global data structure for permitting one program
module to access information from another program module
by bypassing said context barrier.

Since the context barrier is bypassed, there is no need
for an entry point object for access across the context barrier
as recited in the rejection. Therefore, the statement
concerning necessity in the rejection is without merit. In
addition, the above comments with respect to the '835 patent
are applicable and are incorporated herein by reference.
Accordingly, the provisional obviousness type double patenting
rejection is not well founded. Applicants respectfully request
reconsideration and withdrawal of the provisional obviousness-
type double patenting rejection of each of Claims 30 to 51, 53,

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and 57 in view of Claims 1 and 23 to 50 of U.S. Patent Application No. 10/995,926.

The provisional obviousness-double patenting rejection in view of U.S. Patent Application No. 10/996,266

Claims 30 to 51, 53, and 57 stand provisionally rejected for nonstatutory obviousness-type double patenting in view Claims 1 and 30 to 57 of U.S. Patent Application No. 10/996,266. The rejection repeated in part:

. . . since all programs have entry points, the accessing of such a program across a context barrier must necessarily involve the use of an entry point.

Applicants respectfully traverse the obviousness-type double patenting rejection of each of Claims 30, 47, 51, 53, and 57. To show that the claims in the instant application are obvious in view Claims 1 and 30 to 57 of U.S. Patent Application No. 10/996,266, Claims 1 and 30 to 57 of the '266 application must be modified. However, there has been no showing that these claims did not work for their intended purpose and so one of skill in the art would look for a reason to modify the invention. Moreover, as demonstrated above, there are numerous ways for programs to communicate when a context barrier is present without entry points. The rejection has provided no rationale on why one of skill would look only to entry points. In fact, a conclusory statement about entry points that the prior art demonstrates is incorrect, as noted above and incorporated herein by reference cannot provide such a reason. Further, the related applications demonstrate that the statement is without merit. Accordingly, there must be some showing and motivation of why of one of skill in the art would know that the context barrier of the Claims of U.S.

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Patent Application No. 10/996,266 would work with such a mechanism. Accordingly, the obviousness type double patenting rejection is not well founded. Applicants respectfully request reconsideration and withdrawal of the provisional obviousness-type double patenting rejection of each of Claims 30 to 51, 53, and 57 in view Claims 1 and 30 to 57 of U.S. Patent Application No. 10/996,266.

§ 102(b) Rejections

Claims 30 to 51, 53, and 57 remain rejected under 35 U.S.C. § 102(b) as being anticipated by WIPO Patent Publication No. W/O 97/06516, hereinafter referred to as De Jong. The rejection stated in part:

Regarding the rejections under 35 U.S.C. 102 over DeJong, In the examination of a patent application, the meanings of claim terms are given their broadest reasonable interpretation in light of Applicant's specification. See *In re Hyatt*, 21 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-17 (Fed. Cir. 2005) (en banc). The mechanism disclosed by DeJong constitutes a "context barrier" insofar as the term is defined in Applicant's specification.

Applicants respectfully traverse the anticipation rejection of each of Claims 30 to 51, 53, and 57. The above comments show again that in fact the claims are being considered in a vacuum and not in view of the specification. The specification carefully and unambiguously distinguishes an operating system and a context barrier. See for example, Fig. 7 that demonstrates that the operating system is a much lower level than the execution contexts in which the context barrier is shown. In addition, one of skill the art understands that calls to an operating system to enforce access conditions are fundamentally different from use of an entry point object.

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Therefore, the above statements concerning the specification are incorrect and in addition mischaracterize the interpretation that would be understood by one of skill in the art.

Command execution is controlled by the operating system and so any communication is through commands processed by the operating system and not across a context barrier via an entry point object as in the instant Claims. De Jong makes this clear:

First of all, it allows the execution of application specific program code in a smart card without the need to thoroughly examine the code for potential threats to the security of data stored for other applications. As the access conditions which are stored with the data on the card are enforced by the card operating system without possibility of outside interference during execution of application code, a multi application card scheme does not need a program code vetting authority. Such authority is the only way to allow a private code execution facility in traditional smart cards. (Emphasis Added)

De Jong, Page 13, lines 17 to 25.

Storing information with the data and enforcing the access conditions for that data by the operating system is fundamentally different from the entry point object and context barrier in each of Claims 30 to 51, 53, and 57, which are at a different level than the operating system and so provide a new level of functionality that is neither taught nor suggested by De Jong. Applicants respectfully request reconsideration and withdrawal of the anticipation rejection of each of Claims 30 to 51, 53, and 57.

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Claims 30 to 51, 53, and 57 remain in the application. Claims 43, 51, and 53 have been amended. Claims 1 to 29, 52 and 54 to 56 were canceled previously. For the foregoing reasons, Applicant(s) respectfully request allowance of all pending claims. If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).

Respectfully submitted,

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office, Fax No. 571-273-8300 on November 26, 2007.


Mona Marshall

November 26, 2007
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